

**WAIVER OF INDICTMENT AND
CONSENT TO INFORMATION**

[THE JUDGE WILL HAVE ANY INTERPRETER SWORN]

[THE JUDGE WILL ANNOUNCE THE CASE]

You're [Mr./Ms. defendant]? I'm Paul Zoss, a United States Magistrate Judge. On [date of information], the United States Attorney filed a ____ - count information against you. Do you have a copy of the information? *[The judge will make sure the defendant has a copy of the information.]*

In the information, the United States Attorney charges *[the judge will read the information or will summarize the charge(s) in the information]*.

[This charge is a felony charge.] (or) [These charges are felony charges.] You have the right under the U.S. Constitution to insist that this charge/these charges be brought against you in an indictment rather than in an information.

You've signed a form consenting to have [this charge]/[these charges] brought against you in an information.

[or, if no consent form has been signed]

I understand that you wish to waive your right to have [this charge]/[these charges] brought against you in an indictment, and that you agree to have [the charge]/[the charges] brought against you in an information.

[Mr./Ms. defense counsel], is it your understanding that your client wishes to waive his/her right to be charged in an indictment, and agree to have [this charge]/[these charges] brought against him/her in an information?

1. THE OATH

[Mr./Ms. defendant], would you please raise your right hand?

[THE JUDGE WILL PLACE THE DEFENDANT UNDER OATH]

You may put your hand down. [Mr./Ms. defendant], you're now under oath. You should tell the truth because if you don't, you could be prosecuted for perjury or for making a false statement. In any such prosecution, the Government could use against you any statements you make here under oath.

Do you understand?

2. ENSURING MENTAL CAPACITY

[Mr./Ms. defendant], would you please state your full name? How old are you?

[Where it appears the defendant may not be a U.S. citizen, the judge may ask the following questions: Are you a U.S. Citizen? If the answer is “no,” the judge will ask the following question: Of what country are you a citizen?]

[Where it does not appear English is the defendant’s native language, the judge may ask the following questions: Is (Spanish) your native language? Are you able to hear and understand what the interpreter is saying to you in (Spanish)?]

How far did you go in school? Can you can read and write?

[Mr./Ms. defendant], will you promise to let me know if you have problems hearing or understanding anything that comes up during this hearing today?

Have you ever **abused drugs or alcohol**? [If “yes,” then the judge will say the following:] Do you think the fact you used (drugs and/or alcohol) in the past might make it hard for you to understand the legal matters we’ll be talking about at this hearing today?

Have you ever suffered from **depression, anxiety, or any other mental illness**? [If “yes,” then the judge will say the following:] Please give me a brief summary of your mental health problems. Do you think your mental health problems (or the medications you’re taking to treat your mental health problems) might make it hard for you to understand the legal matters we’ll be talking about at this hearing today?

Within the past week, have you used or taken **alcohol, legal or illegal drugs, or prescription or non-prescription medication**? [If “yes,” then the judge will say the following:] What have you used or taken? Do you think this might affect your ability to understand the legal matters we’ll be talking about at this hearing today?

Do you feel you’re competent to waive your right to be charged in an indictment (and to proceed with an arraignment and a plea hearing)?

[Mr./Ms. defense counsel], do you agree?

I ALSO AGREE. I FIND THAT THE DEFENDANT IS COMPETENT TO WAIVE HIS/HER RIGHT TO BE CHARGED IN AN INDICTMENT (AND TO PROCEED WITH AN ARRAIGNMENT AND PLEA HEARING).

3. **WAIVER OF INDICTMENT**

[*Mr./Ms. defendant*], an indictment is a formal charging document returned by a grand jury. A grand jury is a group of people composed of at least sixteen but not more than twenty-three citizens. Before a felony charge can be brought against you in this court, at least twelve members of the grand jury must find there is probable cause to believe you committed a crime, and then vote to return an indictment against you charging you with that crime. A grand jury may decide to indict you for a crime, but it may decide not to indict you for the crime.

If you want, you can waive your right to be charged in an indictment and agree to be charged in an information, which is a document that is simply filed by the United States Attorney. You don't have to waive your right to be charged in indictment, but you can waive that right if you want to. If you do waive your right to be charged in an indictment and agree to be charged in an information, the case will proceed against you based on the information just as though you'd been indicted.

[*Mr./Ms. defendant*], do you wish to waive your right to be charged in an indictment? Do you consent to have [this charge]/[these charges] brought against you in an information?

[*Mr./Ms. defense counsel*], do you believe your client's waiver of his/her right to be charged in an indictment is knowing and voluntary?

4. **I find that:**

The defendant is competent and has knowingly and voluntarily waived his/her right to be charged in an indictment and has agreed that this case may proceed against him/her based on the information. [*If the information has not yet been filed, the judge will say the following.*] The Clerk of Court is directed to file the information.]

5. **ARRAIGNMENT**

[*Ask the prosecutor*] "Would you advise the defendant of the statutory penalties that would apply if (s)he were to be convicted on this/these charge(s) in the information?"

[*Ask the defendant*] "Do you generally understand what you've been charged with? [*Ask the defendant's counsel*] How does your client plead to Count I?" (*Count II, etc.?*)

"Your plea(s) of not guilty is/are accepted. [*If this case goes to trial, it will be*] [*This case is*] scheduled for trial before the Honorable (*name of judge*) on (*date of trial*). Do the parties wish to enter into to the standard discovery stipulation?" [*Choose either paragraph 6(a) or 8(b).*]

(a) *[If both say “yes,” then say]* “Very well, the court will enter Judge (*name of judge*)’s standard trial-setting order and discovery stipulation.”

(b) *[If either says “no,” then say]* “Very well, the court will enter Judge (*name of judge*)’s standard trial-setting order, but without the standard discovery stipulation. Discovery in this case will be governed by the Federal Rules of Criminal Procedure and federal statutory and case law concerning discovery.”

6 IF THE DEFENDANT IS PLEADING GUILTY TO THE INFORMATION, THEN PROCEED WITH THE FOLLOWING:

[Mr./Ms. defendant], this case is assigned to a district court judge, Judge *[name of district court judge]*. You have the right under the United States Constitution to have a district court judge preside over any guilty plea hearing. I’m a magistrate judge. I can preside over this hearing, but only with your voluntary consent. You’ve signed a form stating that you consent to have me preside over this plea hearing. Is that what you’d like me to do?

[Mr./Ms. defense counsel], do you believe your client’s consent is knowing and voluntary?

Very well, I’ll accept the defendant’s consent and go ahead with the guilty plea hearing.

Proceed to Section 4 of the plea colloquy, relating to the defendant’s RIGHT TO A LAWYER, and continue with the remainder of the plea colloquy.